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October 18, 2021

Moby S.P.A. v. Morgan Stanley et al., Case No. 1:21-cv-08031 (S.D.N.Y.)

Dear Judge Woods:

We write on behalf of Defendants Morgan Stanley, Morgan Stanley & Co. LLC, Massimo Piazzesi, and Dov Hillel Drazin (the “Morgan Stanley Defendants”) to respectfully request a briefing schedule regarding the Morgan Stanley Defendants’ forthcoming motion for sanctions. The Morgan Stanley Defendants previously informed the Court of their intention to seek costs as a sanction for Moby’s frivolous *ex parte* emergency motion for temporary injunctive relief (ECF Doc. Nos. 29, 32), and on the pre-motion teleconference on October 7, 2021, we agreed to defer filing such motion until after the Court decided defendants’ anticipated motion to dismiss. (10/7/2021 Tr. 31:19-25, ECF Doc. No. 37.)

As the Court is aware, there will be no motion to dismiss filed in this case, because at approximately 8:30 p.m. on Thursday, October 14, Moby filed a Notice of Voluntary Dismissal without prejudice (ECF Doc. No. 36). The Court may not be aware, however, that at almost the exact same time Moby commenced a new action in state court, with substantially the same allegations and claims, but absent the federal RICO claim or any request for injunctive relief (attached hereto as Exhibit A).

This unabashed forum shopping by Moby cannot stand, particularly when viewed in conjunction with its prior *ex parte* TRO application and immediate withdrawal thereof once challenged by the Morgan Stanley Defendants. As with the *ex parte* emergency motion for injunctive relief, the Morgan Stanley Defendants expended time and money in preparing to move to dismiss Moby’s claims, only to have Moby moot the issue to avoid an adverse decision and *with prejudice* dismissal. And by refiled its claims in state court, Moby has made plain that it will continue to engage in this same behavior in an apparent effort either to deter Morgan Stanley and its affiliates from freely trading bonds it owns, or to extract as-of-yet unspecified commercial concessions.

Moby has repeatedly and without any underlying good faith basis enlisted multiple courts in the United States in an effort improperly to influence the outcome of the court-

supervised restructuring currently proceeding in Italy. Were Moby's conduct over the past three weeks not sufficient evidence of this litigant's bad faith, the Court need look no farther than February 2021, when Moby engaged in the same tactic against a different group of its creditors in state court. Moby's counsel made clear during the October 7 hearing that filing and withdrawing that action "led, ultimately, to the agreement [on a restructuring plan] that we now have in place with the defendants in that action", and invited the same outcome here. (10/7/2021 Tr. 23:20-24:1, ECF Doc. No. 37.)

Accordingly, the Morgan Stanley Defendants intend to move for sanctions in the form of reimbursement for the attorneys' fees and costs incurred in defending against this frivolous, bad faith action. In light of the circumstances, the Morgan Stanley Defendants prefer to have this issue resolved as expeditiously as the Court will permit. If acceptable to the Court, we propose the following briefing schedule: Thursday, October 28, 2021 for the Morgan Stanley Defendants' opening brief; Monday, November 8, 2021 for Moby's opposition; and Thursday, November 11, 2021 for the Morgan Stanley Defendants' reply.

Respectfully,

*/s/ Michael Paskin*

Michael A. Paskin

Judge Gregory H. Woods  
United States District Court  
Southern District of New York  
Daniel Patrick Moynihan United States Courthouse  
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VIA ECF

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All counsel of record.

VIA ECF